

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-
NPFCCCLAIMSINFO@uscg.mil

5890
June 12, 2014

Sent via Email:

[REDACTED]
San Francisco Marina
ATTN: Lisa Chau
3950 Scott Street
San Francisco, CA 94123-1063

Re: 914079-0001

Dear Ms. Chau:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer \$6,865.00 as full compensation for OPA claim number 914079-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

To accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 914079-0001

Claimant Name: San Francisco Marina

I, the undersigned, ACCEPT this settlement offer of \$6,865.00 as full and final compensation for the removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

Title of Person Signing

Date of Signature

Printed Name of Claimant or Authorized Representative

Signature

Title of Witness

Date of Signature

Printed Name of Witness

Signature

*DUNS/EIN/SSN of Payee
Please Circle one

Payee

Bank Routing Number

Bank Account Number

CLAIM SUMMARY / DETERMINATION

Claim Number:	914079-0001
Claimant:	San Francisco Marina
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	Dawn Unglesbee
Amount Requested:	\$6,865.00

FACTS:

Oil Spill Incident

On March 02, 2014, the 30' pleasure craft, WISHES II, sank inside the San Francisco Marina (Claimant, SF Marina) causing a 100' x 30' gasoline sheen. The Harbor Master, Mr. Beglitssoff, immediately deployed boom. Mr. Beglitssoff determined that the vessel could not be pumped out by the Marina staff and that a professional salvor would need to be contacted so the Harbor Master contacted Parker Diving Service.

The Harbor Master was unable to reach the RP and left several voice messages on the vessel owner's phone explaining that their boat had sunk and directed the RP to contact the San Francisco Marina.¹ The Harbor Master had no choice but to move forward with mitigating the threat to the San Francisco Bay, a navigable waterway of the United States, and proceeded to make salvage arrangements with Parker Diving Service.²

The Harbor Master contacted Sector San Francisco, Command Center/IMD, regarding the sinking vessel. The Coast Guard investigation provided that an open exhaust manifold had been removed and left open which allowed the heavy rain, from the night before, to accumulate within the engine compartment. The rain water reached a point where it had exceeded the height of the open exhaust manifold, causing water from the bay to enter the engine room, flooding the entire vessel. The vessel listed until it reached the water line, which inevitably, caused the vessel to sink.^{3 4}

Sector San Francisco IMD, provided the National Pollution Funds Center, (NPFC) with an email stating that the vessel had 200 gallons of gasoline onboard while in the Harbor and that the Harbor Master took appropriate action to mitigate the environmental damage by having the vessel moved in order to mitigate the threat.⁵ The email also stated that the actions taken by the Harbor Master were in accordance with the National Contingency Plan (NCP) Phase III Actions, Controlling the Source of Discharge and Source Control via Salvage Operations.⁶

Additionally, the Department of Fish and Game in its capacity as the State On Scene Coordinator (SOSC) was called and also provided a report of the incident by the Harbor Master.⁷

¹ See, Harbor Master, George Beglitssoff's, notes in claim file.

² MISLE Case Report 673088

³ MISLE Case Report 673088 and Harbor Master notes.

⁴ MISLE Case Pictures

⁵ 2014 06 03 Email from MST2 Dave Irvin, Sector San Francisco/IMD

⁶ *Id*

⁷ Mr. Mike Kirchner was called from the Department of Fish and Game. See, Harbor Master notes in claim file.

Responsible Party

The Responsible Parties (RPs) are Mr. and Mrs. John and Bonnie Freeman of Santa Rosa, California. When the RPs were notified of their sunken vessel, Mr. Freeman offered to pay Parker Diving \$1,000.00 cash and requested that they be placed on a monthly payment plan. Parker Diving Services said that they would take the \$1,000.00 in agreement that the RPs would have the bill paid off in two months. The RPs declined Parker Diving's offer citing that they did not have the resources to pay the bill in full within two months time, and as such, the RPs walked away from the negotiation. No money was exchanged between the Freemans and Parker Diving Services.⁸

On April 08, 2014, Parker Diving Service sent the RPs a letter advising that there was no agreement in place between John and Bonnie Freeman and Parker Diving Service for the raising of the Freeman's vessel, WISHES II, nor was there an agreement for the towing and disposal of the vessel. The letter also stated that Parker Diving Service cannot accept payments for the work performed. The letter noted that Parker Diving Service received no funds from the Freemans.⁹ Parker Diving Service provided the letter to the RPs because the Claimant, San Francisco Marina, paid Parker Diving Service's invoice in full on April 09, 2014.¹⁰

On March 24, 2014, SF Marina sent the RPs the Parker Dive Service invoice for charges related to the salvage of their vessel. The letter requested that the RPs make full payment to the San Francisco Marina within 10 days of the date of the letter. The letter also advised that any unpaid balance not received by April 04, 2014 would be considered delinquent and would be turned over to the San Francisco Bureau of Delinquent Revenue for collections.

Mrs. Freeman sent the Claimant's letter back to SF Marina with hand written notes on it stating the Claimant was wrong and that there was no invoice due and that she already resolved the matter.¹¹

Claim and Claimant

On May 28, 2014, SF Marina presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$6,865.00. The sum certain is comprised of invoice #I-121 for Labor and Equipment.¹²

Description of Removal Activities

Parker Diving Service arrived at the SF Marina at 0935 on March 2, 2014. At 1047, a diver was in the water and the crew rigged five "come-a-longs" under the vessel. At 1115, the crew attached and filled two 1-ton lift bags.¹³

The vessel was lifted out of the water by 1242 and Parker Diving Service immediately began pumping water off the vessel, using a 3" pump and two stripper pumps.¹⁴ Parker Diving secured all openings on the vessel with a foam product.¹⁵

⁸ This information was provided to the NPFC on May 29, 2014 via a telephone conference between Maria from Parker Diving Services and the NPFC Claims Manager, Dawn Unglesbee. See Email 2014 05 29 to Donna Hellberg from Dawn Unglesbee.

⁹ 2014 04 08 Letter to John & Bonnie Freeman from Parker Diving Service.

¹⁰ This was confirmed during the May 29, 2014 telephone conference between Parker Dive Service and the NPFC Claims Manager, Dawn Unglesbee.

¹¹ See Claimants letter to RPs dated 2014 03 24 with RPs hand written notes on it.

¹² Proof of payment was provided by claimant. Claimant provided [REDACTED] dated 4/17/2014.

¹³ Parker Diving Invoice

(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Findings of Fact

1. FOSC coordination was made by the United States Coast Guard, Sector San Francisco, who determined that the removal actions were consistent with the NCP; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);¹⁷
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. Claimant properly presented the claim to the Responsible Party, who has denied payment.¹⁸
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the costs were adequately documented and reasonable.

Invoice #I-121

This invoice is for Labor and Equipment in the amount of \$6,865.00. The NPFC has approved this invoice in its entirety based on the published rate schedule of costs¹⁹ in place at the time services were rendered and based on the FOSC’s coordination of the actions performed by the contractor as reasonable, necessary and in accordance with the NCP.

On behalf of the vessel owner, the Harbor Master determined that the safest and most effective way to mitigate the environmental damage was for Parker Dive Service to raise the vessel and move it to a safe location, in the event the vessel sank again. The Responsible Party has denied the invoice that resulted from response to their sunken vessel, WISHES II. As such, the Claimant, SF Marina, took immediate action to mitigate the threat to the environment and paid for the services provided by Parker Diving

¹⁷ See, 2014 06 03 Email from Sector San Francisco/IMD

¹⁸ See, Claimant’s letter to RPs with RPs hand written notes on it, dated 2014 03 24

¹⁹ See, Parker Diving Service, a d.b.a. for Redwood Shore Diving, Inc. Labor Rate Schedule dated, January 1, 2013.

Services. Coast Guard, Sector San Francisco/IMD office provided FOSC coordination for actions undertaken by all parties involved.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will offer **\$6,865.00** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #914079-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor:



Date of Supervisor's review: **6/12/14**

Supervisor Action: ***Approved***

Supervisor's Comments: